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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,369	09/17/2003	Mario Jovelino Del Nunzio	C4243(C)	4574

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EXAMINER	
DOUYON, LORNA M	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 08/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/664,369	DEL NUNZIO ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 May 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2,3,5-10 and 14-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2,3,5-10 and 14-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. This action is responsive to the amendment filed on May 23, 2006.

2. Claims 2-3, 5-10, 14-17 are pending. Claim 1 is cancelled. Claims 4, 11-13 were previously cancelled. Claim 17 is newly added.

3. The objection to claim 1 is rendered moot in view of applicants' cancellation of this claim.

4. **Claim 15 is objected** to because of the following informalities: The limitation "solid surfactant particles of surfactant" in line 3 appears to be redundant. Appropriate correction is required.

5. **Claim 10 stands** rejected under **35 U.S.C. 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 stands indefinite because the "upper limits" in the limitation "wherein the carbonate and acid source make up at from 50 to 100 wt%, preferably from 60 to 99 wt%" of the granule in line 3 is not consistent with the limitations of claim 15, to which this claim is dependent upon, because the effervescent granule in claim 15 not only comprises the acid source and carbonate source, but also requires "from 3 to 8 wt% of solid surfactant particles; and additionally a binder". It is suggested that "100wt%" and "99 wt%" be replaced with "95 wt%".

6. Claims 2-3, 5-10, 14-17 are rejected under 35 U.S.C. (103) as being unpatentable over Spadoni et al. (WO 98/46716), hereinafter "Spadoni" in view of Tadsen et al. (US Patent No. 5,527,489), hereinafter "Tadsen" for the reasons set forth in the previous office action. In addition, Spadoni teaches that the dry effervescent granules comprise up to 50% by weight of the total granule of a binder or a mixture thereof, preferably up to 35% and more preferably up to 20% and suitable binders, aside from the C6-C20 alkyl or alkylaryl sulphonates or sulfates, include polyethylene glycols with an average weight of from 600 to 10,000 (see page 8, last paragraph and page 9, lines 1-3). Spadoni also teaches that the granular detergent compositions, like laundry detergent compositions (see page 1, first paragraph) comprise from 0.1% to 99% by weight of the total composition of the dry effervescent granules, preferably from 2% to 50% by weight (see page 12, last paragraph). Hence, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate polyethylene glycol, in addition to the alkyl sulfate, as binders into the effervescent granules because Spadoni suggests their mixtures in order to yield effervescent granules having enhanced effervescence which results in improved dissolution or dispensing of the compositions as taught in page 2, last 7 lines.

7. In the alternative, claim 2 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Spadoni in view of Tadsen as applied to the above claims, and further in view of "*The Condensed Encyclopedia of Surfactants*" for the reasons set forth in the previous office action.

Response to Arguments

8. Applicant's arguments filed May 23, 2006 have been fully considered but they are not persuasive.

With respect to the rejection based upon Spadoni in view of Tadsen, Applicants argue that in reading applicants' examples (p.14), it makes clear that the premixed particles become coated with liquid binder and are then shaped at low pressure to make the granule and that the surfactant must be present as particles in the granule and in this state it will NOT be functioning significantly as a binder. Applicants also argue that Tadsen selects his alkyl sulfate particle size for reasons linked to the dry neutralization process, thus, one of ordinary skill in the art is not going to use Tadsen's teaching about particle size as useful information for the particle size to use in an effervescent granule. Applicants also argue that the lowest level of effervescent granule used by Spadoni is 4wt% in example N where the effervescent granule has no binder, and that Spadoni never uses a binder (PEG) and surfactant in the same granule.

The Examiner respectfully disagrees with the above arguments because even though Applicants' surfactant is not functioning significantly as a binder as opposed to the use of surfactants as binders in Spadoni, the fact remains that the surfactants functioning as binders in Spadoni are solid particles which meet applicants' "solid surfactant particles", and even though Spadoni does not explicitly disclose their particle size, it is shown by Tadsen that particulate surfactants such as alkyl sulfate surfactants have a weight average particle size of from about 100 microns to 3500 microns (see col. 7, lines 31-46), whose particle size overlap those recited. Tadsen is relied upon to show that in the detergent art, typical particulate alkyl sulfate surfactants have a particle size which overlaps those recited. With respect to Spadoni's examples not having

both surfactant and PEG in the effervescence granules, please note that a reference is not limited to the working examples, see *In re Fracalossi*, 215 USPQ 569 (CCPA 1982). As stated above, Spadoni teaches that the dry effervescent granules comprise up to 50% by weight of the total granule of a binder or a mixture thereof, preferably up to 35% and more preferably up to 20% and suitable binders, aside from the C6-C20 alkyl or alkylaryl sulphonates or sulfates, include polyethylene glycols with an average weight of from 600 to 10,000 (see page 8, last paragraph and page 9, lines 1-3). A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including nonpreferred embodiments, see *Merck & Co. v. Biocraft Laboratories,* 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), *cert. denied,* 493 U.S. 975 (1989).

Applicants also argue that Spadoni creates direct contact between the acid and alkali by use of pressure which is in contrast to Applicants' mixture with binder which is "a wetted mixture" (page 15). Applicants also argue that all the listed binders on page 8 of Spadoni are solid at room temperature, however, Applicants form a wetted sticky mixture.

Even though Applicants form a wetted sticky mixture in the preparation of the effervescent granules, please note that the present claims are composition claims, not process claims. The "wetted sticky mixture" of Applicants does not remain a wetted sticky mixture but rather becomes a dry product when incorporated to the rest of the detergent components in the production of the particulate laundry detergent composition. Accordingly, the obviousness rejections of record are maintained.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is (571) 272-1313. The examiner can normally be reached on Mondays-Fridays from 8:00AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lorna M. Douyon
Primary Examiner
Art Unit 1751